FILE COPY

Office - Supreme Court, U. S.
MAR 10 1947
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

[redacted]6
No. ~~12~~ ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AS AMICUS CURIAE.

JAMES E. WATSON,
ORIN DEM. WALKER,
Counsel for
ROBERT E. LEE JORDAN,
as Amicus Curiae,
815 15th Street, N.W.,
Washington 5, D. C.

February 1947.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX TO BRIEF.

	Page
Summary of Argument	2
Argument	2
Point A	2
Point B	4
Point C	8
Point D	11
Point E	13
Point F	14
Point G	17
Conclusion	17

CITATIONS.

Bagnell v. Broderick, 10 U. S. L. Ed. 235	9
Beecher v. Wetherly, 95 U. S. 517	9
Boggs v. Merced Min. Co., 14 Calif. 274	14
Borax Consolidated Ltd. v. City of Los Angeles, 296 U. S. 10	9
Doran v. Central Pacific Rwy. Co., 24 Calif. 245	8
Dunbar Lime Co. v. Utah Idaho Sugar Co., 17 Fed. 2nd 351	16
Gibson v. Chouteau, 18 U. S. L. Ed. 235	9
Gorman Min. Co. v. Alexander, 51 N.W. 346	15
Great Northern Rwy. v. U. S., 32 Fed. Supp. 564	7
Hicks v. Bell, 3 Calif. 227	7
Ivanhoe Min. Co. v. Keystone Consul Min. Co., 102 U. S. 167	15
Lovelace v. Sou. West. Pet. Co., 267 Fed. 513	16
McDonald v. U. S., 119 Fed. 821, 825	15
Moore v. Shaw, 17 Calif. 199	6
Mullan v. U. S., 118 U. S. 271	16
Parkinson v. Bracken, 39 Am. Dec. 296	9
Patton v. City of Los Angeles, 169 Calif. 521	13
Pollard v. Hagen, 3 How. 212	9
San Pedro and Cannon del Agua Co. v. U. S., 13 Sup. Ct. 94	15

Page

U. S. v. Castillero, 67 U. S. 17 14
U. S. v. Coronado Beach Co., 255 U. S. 472 9
U. S. v. Knight's Admrs., 67 U. S. 227 14
U. S. v. Sweet, 245 U. S. 563 16
Webb v. Amer. Asphalt and Min. Co., 157 Fed. 203, 205 16
Weber v. Harbor Commissioners, 18 Wall. 57 9
Worcester v. Georgia, 6 Pet. 515 9
Act of March 3, 1851 (Vol. IX U. S. Stat. L. 631, Section 13) 3, 7
Act of March 31, 1853 (10 Stat. L. 246) 15
Act of July 4, 1866 (14 Stat. L. 86) 15
Constitution of United States, Article 4, Section 4 6
Oil Land Leasing Act of 1920, 41 Stat. 437, as amended, 30 U. S. C. 181 ..... 14, 17
Treaty of Guadalupe Hidalgo of 1848 (Vol. IX U. S. Stat. L. 432) 2
U.S.C.A. Title 43, Chap. 20, par. 865 ..... 4, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 12—ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Robert E. Lee Jordan moves for leave to file a brief as Amicus Curiae in the above action, a copy of which is hereto attached, upon the grounds that certain pertinent and material facts which will assist the Court in determining ownership, by the United States of America, of the minerals in the lands of the coast of California, but which are not presented for the consideration of the Court by the Government's brief and are believed to be vital to the issues raised.

Copies of the attached brief have been delivered to counsel for the Government and the State of California, and both have advised petitioner that they were neutral with respect to the filing of the brief and would not oppose its filing in this Court.

ROBERT E. LEE JORDAN.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 12—ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

SUPPLEMENTAL BRIEF OF ROBERT E. LEE JORDAN AS AMICUS CURIAE ON MOTION FOR JUDGMENT BY THE UNITED STATES AS PRAYED IN THE COMPLAINT.

The purpose of the litigation is to establish the rights of the United States in the bed of the Pacific Ocean adjacent to the coast of California beginning at low-water mark and extending seaward for three nautical miles. The limitation placed upon the litigation in the complaint fails to raise essential and pertinent questions regarding the ownership of the tide lands, lands in artificially enclosed harbors, and the rights of citizens as established by various acts of Congress relative to the development of oil and gas.

SUMMARY OF ARGUMENT.

The vital question to be considered by this honorable court, in the instant litigation, is the ownership of minerals (oil and gas) deposited in the tide and submerged lands of the coast of California. The question of title to the tide and submerged lands is of importance only as it confirms the fact that no conveyance or grant of tide or submerged lands, to the State of California, has ever been made by Congress and the tide and submerged lands and the minerals in them are owned by the United States Government. The claim of California to proprietary ownership of tide and submerged lands, based upon the provision of the Enabling Act admitting California to statehood upon an "equal footing" with the original states, is without legal foundation and lacks confirmatory action by Congress, under the Constitution, to support the contention. This court should not be asked to reaffirm "dicta" decisions involving questions of title to tide lands which are alleged to be erroneous. No tide or submerged lands, which are in artificially enclosed harbors should be excluded from consideration. All filled-in lands upon and over tide and submerged lands from which slant drilled oil and gas wells are operating and which are draining oil from the tide and submerged lands, should be included in the consideration of the instant case. The rights and interests of citizens in the conservation of the natural resources of the nation and in their development, under existing laws, are a part of the problem vital for the determination of the issue.

ARGUMENT.

A.

The territory ceded to the United States by Mexico under the terms of the Treaty of Guadalupe Hidalgo of 1848 (Vol. IX U. S. Stat. L. 432) included the tide and submerged lands. This cession of land was made to the United States Government and not to the State of California which did

not exist as a State or territory at that time. (Map, Exhibit 1.)

California was admitted to the union as a State in September 1850, at which time it possessed no land, yet was a sovereign political State. Congress donated lands to the extent of 500,000 acres subject, however, to certain reservations, the first reservation being that covered by the Act of March 3, 1851 (Vol. IX U. S. Stat. L. 631, Section 13). This law provided that all persons having claims to title to any of the land within the State of California had to file their claims with the Commission within a period of two years and was made primarily for the purpose of enabling Mexicans and Spaniards who had received grants from those respective governments to secure title to the lands covered by those grants. The law further provided that after the expiration of the two years period, all of the land within the State of California "shall be deemed, held, and considered as part of the public domain of the United States."

It is evident that at the time of the passage of this Act in 1851, California still had no land, although it had been admitted to the union in 1850; and further that it would require at least two years before the land within the State of California would be subject to patent to that State.

The grant to California was subject to the further reservation that no selection of land could be made by the State of California until after the territory comprising the State had been surveyed and then, only, by the legislature of the State of California.

A careful search of the Acts of Congress do not reveal that any grant of tide or submerged lands was made by Congress to the State of California. The records of the Interior Department disclose that the legislature of the State of California did not select any tide or submerged lands as a part of the 500,000 acres of grant made to the State by Congress. It is a further fact that up to the present date, no survey has been made by the Government of the tide and submerged lands of the coast of California

and that it would be and has been impossible during all the years since the admission of California to Statehood, for the legislature of California to have selected any tide or submerged lands.

It is evident from the foregoing that the ownership of land was not an essential element to state sovereignty and that the State did have political sovereignty from the time of its admission to the union without being the owner of a foot of land.

By reference to U.S.C.A. Title 43, Chapter 20, paragraph 865, the law provided, that in granting the land to the State of California, no minerals were included in that grant, so that the possession of minerals was not an essential element of sovereignty. Hence, under the facts and the law, there is no basis whatsoever for any claim on the part of California to the ownership of tide and submerged lands or minerals which may be found beneath the surface.

B.

California has made a claim with respect to proprietary ownership of tide and submerged lands based upon the ground of the wording of the Enabling Act, which reads as follows:

> "Shall be one and is hereby declared to be one of the United States of America admitted into the Union on an equal footing with the original States in all respects whatsoever."

The question immediately arises as to what was meant by the phrase "on an equal footing with the original States in all respects whatsoever." Did California in law or fact come into the Federal Union "on an equal footing" with the thirteen original States? The thirteen original States which formed the Federal Union were each sovereign States. Each owned all of the territory within its borders, which included the tide and submerged lands. Their right to ownership in these tide and submerged lands has been

confirmed by court decisions from the earliest days of the Republic.

The statutes at large disclose that much the same language was used "on an equal footing" in the enabling acts admitting many of the States to the union regardless of whether they were States bordering on the ocean or land locked States. The words "on an equal footing" surely were not meant to mean that the land locked States which had no tide or submerged lands would have the same right as the thirteen original States in tide and submerged lands. At the time the thirteen original sovereign colonies formed the Federal Union they surrendered certain rights to the Federal Union but as sovereign States they retained their original State ownership of land. Their right to the tide and submerged lands was never surrendered to the Federal Government. The same set of facts exists with reference to the State of Texas, which also was admitted to the Union as a sovereign State, and it did not surrender its right, title and interest to the tide and submerged lands forming its Southern and Eastern boundaries.

It would seem desirable at this point to differentiate between the thirteen original States which formed the Union in their sovereign capacities as independent colonies and the States which were admitted to the Union under the Constitution. The new States formed were not sovereign States in themselves at the time of admission. The land which they acquired was granted to them by Acts of Congress, upon selection of the State legislature after Government survey. None of these States owned any land at the time of their admission to the Union, yet they were each sovereign States in a political sense, without proprietary ownership of the land, which was granted to them by Congress, at the time of their admission to the Union. In considering what was meant by the words "on an equal footing" it cannot be contended that the land locked States which had no tide or submerged lands were not fully politically sovereign States, by reason of not having tide and submerged lands, or upon "an equal footing" as to political

sovereignty with the coastal States. Any other conclusion would defeat the purpose for which this provision for equality is supposed to have been made. If the ownership and control of tide and submerged lands were essential to State sovereignty, then the land locked States are not equally sovereign to the coastal States and some provision would have had to have been made to provide for a share of the land locked States in the tide and submerged lands, or equal sovereignty could not exist.

Probably the best distinction between political and sovereign authority was written by Chief Justice Field in the case of *Moore* v. *Shaw,* 17 California 199, when he was on the Supreme Court of the State of California. He explains the difference as follows:

> "To the existence of this political authority of the State—this qualified sovereignty, or to any part of it—the ownership of the minerals of gold and silver found within her limits is in no way essential. The Minerals do not differ from the great mass of property, the ownership of which may be in the United States, or in individuals, without affecting in any respect the political jurisdiction of the States. They may be acquired by the State, as any other property may be, but when thus acquired she will hold them in the same manner that individual proprietors hold their property, and by the same right: by the right of ownership, and not by the right of sovereignty."

It is well to consider just what proprietary and sovereign rights could be granted to a new State coming into the Union. It would appear that the Constitution would be the best guide in ascertaining just what is given a new State and this is set out in Article 4, Section 4 of the Constitution which reads:

> "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature or the executive (when the legislature cannot be convened) against domestic violence."

Under this provision of the Constitution, there is no guarantee made by the Federal Government of any sovereignty or proprietary ownership in lands or a guarantee that each new State shall be on an equal footing with all other States. The Enabling Act which appears in the Government's brief on page 224, Section 3, is not a donation of land, a deed to any land or a congressional grant, but on the contrary contains the following provision:

> "That the State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits."

The Act of 1851 hereinbefore referred to (Vol. 9, U. S. Stat. L. 631, Section 13) provided that after all of the claims to land within the boundaries of the State of California had been determined, that all land "Shall be deemed, held, and considered as part of the public domain of the United States."

There is, therefore, nothing by way of congressional legislation to support the allegation that California acquired title to tide and submerged lands by any act of Congress or that the Enabling Act constituted a donation or grant of tide and submerged lands to California or that the Enabling Act admitting California by its terms granted to California the tide and submerged lands of its coast.

It is an established rule of law that "nothing passes by implication" and "that nothing passes but what is conveyed in clear and explicit language" (*Great Northern Railway* v. *United States,* 32 Fed. Supp. 564). In the State of California, in the case of *Hicks* v. *Bell,* 3 California 227, it was held:

> "The only manner in which the right, title, or interest of the United States in or to any of the public lands can pass to or rest in any private person is by means of an act of Congress directly making the grant or authorizing the grant in their behalf to be made by

> some person or officer. No title will accrue to any person against the general Government by prescription, by adverse possession, or by estoppel in pais."

In the case of *Doran* v. *Central Pacific Railway Co.*, 24 California 245, it was held:

> "The general Government does not hold its lands as a mere private proprietor, but its control and power of alienation and disposition of the lands are uncontrolled save by the Constitution of the United States alone."

Where does the Constitution provide that by the simple act of admission, a new State is automatically granted title to tide or submerged lands or any other lands which may happen to form a part of its boundaries? The term "equal footing" has nothing to do with the proprietorship of any part of the public domain which has not been by act of Congress specifically conveyed.

Factually and legally there is no foundation for the claim of the State of California to proprietorship in the tide and submerged lands along its coast and its claims are without substance.

C.

The complaint of the Government specifically eliminates tide lands from the question of ownership, which is being brought before this court for adjudication. All of the arguments advanced by the Government with respect to ownership of submerged land apply equally to the ownership of tide lands by the Government.

The reason that this question has been by-passed by the Government, is, that this honorable court has in the past ruled that the tide lands were the property of the States. The brief of the Government on page 72 states that the decisions granting the tide lands and inland waters to the States

> "Is believed to be erroneous but the Government does not ask that it be overruled; the Government suggests

merely that the unsound rule be not extended to the marginal sea."

On page 143 the Government brief states

"We do not urge that the decisions applying the rule to tidelands and inland waters be overruled. But we submit that the unsound rule of those decisions should not be extended to the marginal sea."

With respect to the foregoing assertions by the Department of Justice, on behalf of the Government, that the decisions heretofore rendered granting tide lands to the States "is believed to be erroneous" it would appear important that the leading decisions, which have been made with respect to tide lands, should be reviewed by this court. It is believed that the first decision with respect to tide and submerged lands is that of *Pollard* v. *Hagen*, 3 How. 212. It is to be noted in this connection that the United States Government was not a party, and in practically all, if not all, cases subsequently decided on the basis of the decision in the *Pollard* v. *Hagen* case, that the United States was not a party in those actions. In none of such leading cases as: *Weber* v. *Harbor Commissioners*, 18 Wall. 57; *Borax Consolidated Ltd.* v. *City of Los Angeles*, 296 U.S. 10; *Worcester* v. *Georgia*, 6 Pet. 515; *Bagnell* v. *Broderick*, 10 U.S. L. Ed. 235; *Parkinson* v. *Bracken*, 39 Am. Dec. 296; *Gibson* v. *Chouteau*, 18 U.S. L. Ed. 235; *Beecher* v. *Wetherly*, 95 U.S. 517; and others, were the interests of the United States represented in the litigation. The only case in which a question of the ownership of tide and submerged lands was presented to the court in which the Government was a party was the case of *United States* v. *Coronado Beach Co.*, 255 U.S. 472. This case confirmed the ownership of the tide and submerged lands by Mexico and its right to pass title to them to their grantees. It is apparent from the foregoing facts that all decisions with reference

to tide and submerged lands in which the United States was not a party, should be considered as dictum decisions, and in order that the interests of the Government be protected, that the rulings of this honorable court in all such cases should be reversed.

There must be some good reason why the Government is willing to waive its claim to ownership on the tide lands in view of the contention advanced, that the decisions of this court have been erroneous, with no attempt being made, to point out wherein lay the errors and no effort made to secure for the people of the United States the property which belongs to the Government and which is rich in natural resources, necessary for the safety and protection and well-being of the nation.

There seems little justification for this surrender by the Government of the rights of the people to the State of California and the oil companies. It is believed that the question of title to the tide lands is inherently a part of the action before the court and should be fully explored and a decision rendered which will include and determine the ownership of the tide lands and the minerals in them. Unless it can be demonstrated that Congress donated or granted the tide lands to the State of California by Congressional action, the title to the tide lands still rests with the United States Government and if the arguments advanced in support of the claim that the submerged lands under the marginal sea remain in the United States Government by virtue of not having been conveyed to California, then the tide lands must be included in the decree for and in the interests of the people of the United States, who are not parties in this action, but whose interests are paramount and who should be represented in this litigation in their own interests and in opposition to the brief filed by the Government which willingly surrenders their rights to the conservation of the natural resources of the nation and upon the doctrine that notwithstanding the decisions

referred to are erroneous, the Government asks that they be reaffirmed.

D.

The pleadings filed by the Government, in the instant litigation, exclude from the action a consideration of submerged lands which may be in harbors and specifically on pages 202 and 203 of the Government's brief mentions the harbor of the City of Long Beach.

At the time the territory out of which California was formed was ceded to the United States by Mexico, the coast line where are now located the Cities of San Pedro and the City of Long Beach could not in any sense be called a harbor. There is attached hereto a map secured from the archives of the United States as of 1868, Exhibit 2, which indicates the physical formation of that strip of the coast. Within the last few years the cities of San Pedro and Long Beach, with the financial assistance of the United States Government, built breakwaters and made other harbor improvements and have now made an artificially enclosed harbor at Long Beach.

The largest single deposit of oil which has been found on the coast, up to this time, lies in the outer harbor of Long Beach. It has been estimated by oil men that over 200,000,000 barrels of oil have been removed from this pool since 1937 and that its present drainage is about 100,000 barrels per day.

The past decisions with reference to ownership of harbors and bays would seem to indicate that in naturally enclosed harbors the State woud have claim to what might be found in a naturally enclosed harbor. There is no basis in law known to the writer which would grant ownership of submerged lands, in an artificially enclosed harbor, to a State. Were this so, the State of California and every municipality could build artificial harbors at any point along the coast where oil might be discovered and thus defeat the Government of its ownership of oil. The pur-

pose which the Government has in eliminating the harbor of Long Beach, which is being exploited by the oil companies and the City of Long Beach, against the interests of the Government is difficult to understand and certainly needs clarification before this court, as to why this great oil pool is to be surrendered without a contest on the part of the Government. It certainly is not in the interests of the people of the United States that its natural resources should be surrendered, simply because the City of Long Beach has in the past seven or eight years enclosed the harbor and thus enables it to claim this great pool of oil upon the theory that it is within an enclosed harbor and belongs to the City and State. There is attached hereto a map marked Exhibit No. 3 which shows the harbor of Long Beach as it was in 1937. The subsequent developments and the efforts which have been made since 1937 to enclose the harbor appears in map Exhibit 4. All filled land is marked in yellow on the Exhibits.

It is urgently requested that an examination of the coast outline map of 1868 (Exhibit 2) and map, Exhibit No. 4, showing the condition of Long Beach Harbor as it exists today, be made and to note how much of the tide and submerged lands have been filled in by the City assisted by the Government. Exhibit 5 is a map issued by the Oil Umpire of California and confirms U. S. Geodetic Map Exhibit 3 as to the harbor in 1937 and Exhibit 6 issued by California confirms the development of the harbor as of 1945 as shown on U. S. Geodetic Map Exhibit 4. It is submitted that if the argument advanced by the Government is sound, with respect to the submerged lands, or marginal sea, as it is termed, that all of the submerged land which has been filled in belongs to the United States Government. Upon the same theory that all land filled in upon the tide lands which have not been conveyed to the State of California or the City of Long Beach by Congress, likewise is owned by the United States Government. This particular proposition is not put forward in the Government's brief,

but is an essential question which should be considered by this court in exploring the whole question.

The State of California itself has had occasion to consider the question of filled-in land and by rule of the Supreme Court of California, in the case of *Patton* v. *City of Los Angeles,* 169 California 521, it was held, that the character of the land on which fills had been made, was not changed by virtue of having been filled in. If it was tide land and fills had been made on it, according to the rule of the court, the land still remains tide land. The ruling held that such land as was filled in did not by virtue of being filled in, become a part of the upland merely by reason of being joined to it but that it was still tide or submerged land as the case might be. This decision also held that title to the land filled in on tide or submerged lands could not be acquired by adverse possession. These points are of extreme importance to the Government in asserting its claim to all filled-in land over and on the tide and submerged lands in the inner and outer harbor of Long Beach. By the decision, above quoted, the land filled in on the submerged land does not become a part of the upland and the land notwithstanding the fills, is still held to be tide or submerged land, and the State of California cannot claim title to it on the theory of adverse possession.

E.

As the case in litigation is primarily to determine the ownership of oil in the submerged lands, which should also include tide lands, it is important to note on map Exhibits No. 4 and 6 the extent to which the oil companies have been permitted to drill wells upon the filled-in tide and submerged lands in the harbor of Long Beach. To eliminate this land from the action pending in this court would seem to be a betrayal of the interests of the American people.

The basic question for the consideration of this court is the matter of the ownership of the oil deposits in the tide and submerged lands of California. This suit was initiated

because of the demands of citizens of the United States who wished to avail themselves of the opportunity to cooperate with the Government in the development of oil and gas under the Oil Land Leasing Act of 1920, 41 Stat. 437, as amended, 30 USC 181. The complaint of the Government alleges that the Government owns the minerals under the marginal sea and omits minerals in the tide lands.

It is noted with apprehension and concern that the brief of the Government makes no argument with respect to the reservation of minerals in the grants made to the State of California. California would have no more interest in the tide and submerged lands at this time, than it did in the 1850s, were it not for the discovery of oil. Nor would the City of Long Beach, California, from and after 1937, when oil was first discovered in the harbor, have constructed an artificial harbor, to enclose the greatest oil pool discovered on the West Coast, and claim it.

F.

Regardless of the question as to the title to tide and submerged lands, there is a separate and distinct question as to the ownership of minerals (oil and gas) in those lands. The mining code issued by Spain in 1783, Title V, Section 1, provided that "mines are the property of my royal crown." When the Spanish Government was succeeded by the Mexican Government, Mexico retained and maintained the same governmental right to the ownership of minerals in Mexico, 54 I. D. 568-9. The United States courts have recognized the ownership of minerals by Spain and Mexico and have ruled that the United States Government succeeded to the Spanish and Mexican rights at the time the territory, out of which California was created, was ceded to the United States. *U. S.* v. *Castillero,* 67 U. S. 17; *U. S.* v. *Knight's Admrs.,* 67 U. S. 227; *Boggs* v. *Merced Min. Co.,* 14 California 274.

When Congress created the office of Surveyor General to determine the claims of Mexicans and Spaniards to lands in California, minerals were expressly excluded by Con-

gressional legislation, 10 Stat. L. 308, Section 4. It was held that no interest in minerals was accessory or incidental to the surface rights included in grants from Spain and Mexico and complete and unencumbered title to minerals in the land which formerly vested in the Mexican Government passed to the United States upon cession of the territory.

Congress by the act of March 31, 1853, (10 Stat. L. 246) excepted from sale, all mineral lands found within public lands opened by the United States for sale in the State of California and by the Act of July 4, 1866, (14 Stat. L. 86) Congress provided in all cases that lands valuable for minerals should be reserved from sale except as otherwise expressly directed by law.

In the case of *San Pedro and Cannon del Agua Co.* v. *United States,* 13 Supreme Court 94, it was held that the paramount title to the mineral lands asserted by the United States was in keeping with the laws of other countries on the same subject and that superior title to mineral lands is in the United States, and no State or territorial law can affect in any manner this superior title. That the United States is recognized as the proprietor of the minerals, was determined in the case of *Gorman Min. Co.* v. *Alexander,* 51 N. W. 346.

The policy of the United States Government with respect to the ownership and conservation of natural resources was set out clearly in the case of *Ivanhoe Min. Co.* v. *Keystone Consul Min. Co.,* 102 U. S. 167, where it was held

> "Mineral lands are, by the settled policy of the Government, excluded from all grants; therefore, the grant of the sixteen and thirty-six sections of public lands to the State of California for school purposes made by the act of March 3, 1853, 10 Stat. L. 244, was not intended to cover mineral lands."

In the case of *McDonald* v. *United States,* 119 Fed. 821, 825, it was held

> "No act passed, shall be construed as to embrace mineral lands which in all cases should be and are reserved exclusively to the United States. Every grant of public land should be taken as reserving and excluding mineral lands in the absence of an expressed provision to include them. Nothing passes by implication."

Mineral lands include not only metalliferous land but all such as are highly valuable for their deposits of a mineral character. The term "lands valuable for minerals" also applies to oil and gas deposits. *Webb* v. *American Asphalt and Min. Co.*, 157 Fed. 203, 205; *Lovelace* v. *So. West. Pet. Co.*, 267 Fed. 513.

The settled policy of the Government excludes all mineral lands from grants to states unless they are expressly included. *Dunbar Lime Co.* v. *Utah Idaho Sugar Co.*, 17 Fed. 2nd 351; *U. S.* v. *Sweet*, 245 U.S. 563.

Under U.S.C.A. Title 43, Chapter 20, Section 865, in confirming certain lands selected by California minerals are specifically reserved. *Mullan* v. *U. S.*, 118 U. S. 271.

It, therefore, appears that regardless of the question of title to tide and submerged lands, no minerals in the tide and submerged lands were ever granted to the State of California and that the minerals, which include oil and gas in the tide and submerged lands, are owned by the United States Government and such ownership should be confirmed.

G.

The citizens of the United States are entitled to a presentation of their claims and rights in and to the preservation of the Nation's natural resources.

The citizens are dependent in a great measure upon the agencies of the Government to protect these rights, yet there are instances in which the rights of the citizens may not be fully presented by the action of a specified Government agency, which makes it encumbent upon the citizens exercising their rights of citizenship, to present to a court, a statement of their views in the hope that they may be of value to the court The rights of citizens are set out in the laws of our country. Where these rights and interests are not only not presented to the Court, but are accidentally or purposely omitted from such presentation and or surrendered, by a Governmental Agency, as representing the people of the nation, it becomes obligatory upon us, as friends of the Court, to submit the facts to the Court for its consideration. There are many citizens of the United States who believing that the minerals in the tide and submerged lands of the coast of California are the property of the United States Government, who have, under the Oil Land Leasing Act (Supra) filed applications for leases on those tide and submerged lands and feel that a full presentation of their points of view and their rights, as they believe them to be, should be brought to the attention of this Honorable Court.

CONCLUSION.

The motion for judgment should be granted with respect to ownership of the submerged lands under the marginal sea, but should be extended to cover all tide lands, not conveyed by Act of Congress to the State of California. The sole ownership of minerals (oil and gas) in tide and submerged lands of California should be reaffirmed. All filled-in lands upon and over the tide and submerged lands along the coast as well as in artificially enclosed harbors should be

declared to be the property of the United States, and the rights of citizens, in the conservation and development of the natural resources of the nation, under existing laws, should be reaffirmed.

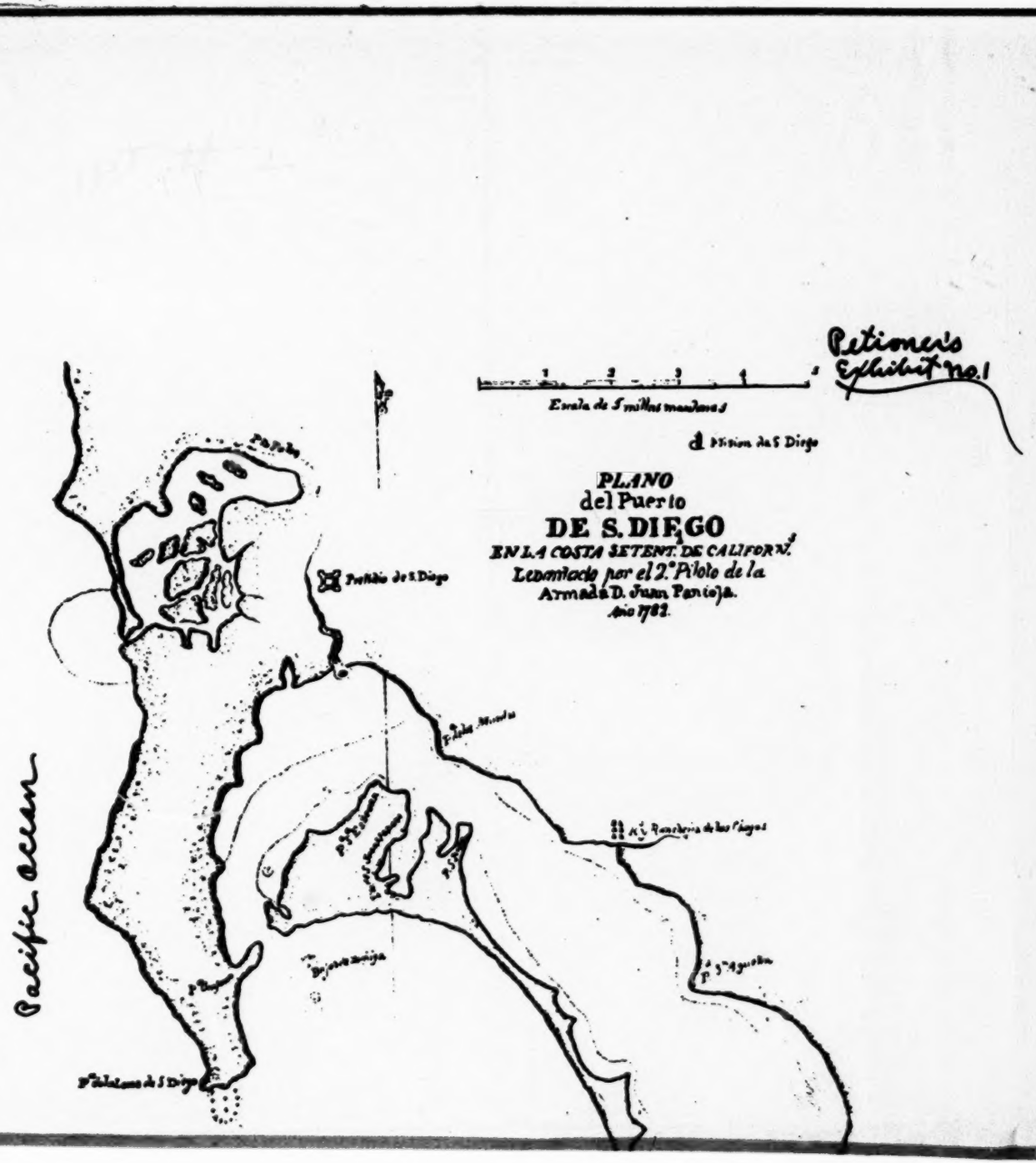
Respectfully submitted,

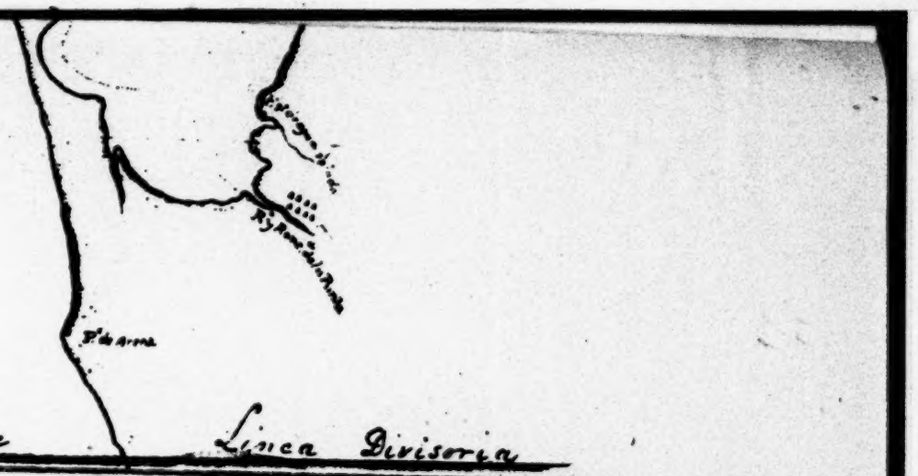
ROBERT E. LEE JORDAN.

February 1947

JAMES E. WATSON,
ORIN DEM. WALKER,

Counsel for
Robert E. Lee Jordan,
815 15th Street, N. W.,
Washington 5, D. C.





Boundary Line — Línea Divisoria

This is the Plan of the Port of San Diego, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic. Signed this day.

Witness our hands and Seals, at Guadalupe Hidalgo, this Second day of February, one thousand eight hundred and forty-eight.

N. P. Trist.

Bernardo Couto

Mig.l Atristain

Luis G. Cuevas

Este es el plan del Puerto de San Diego, a que se refiere el articulo quinto del tratado de paz, amistad, limites y arreglo definitivo entre la Republica mexicana y los Estados Unido de America, firmado en este dia. Y para que conste, lo firmamos y sellamos en la Ciudad de Guadalupe Hidalgo el dia 2 de Febrero de mil ochocientos cuarenta y ocho

IBT #2 2

FOLD-OUT IS TOO LARGE TO BE FILMED